

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 100/2019
[2019] NZSC 121

BETWEEN RANGITIRA DEVELOPMENTS LIMITED
Applicant

AND ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
Respondent

Court: Winkelmann CJ, Glazebrook and Ellen France JJ

Counsel: J E Hodder QC and M R G Christensen for Applicant
M C Smith and P D Anderson for Respondent

Judgment: 5 November 2019

JUDGMENT OF THE COURT

- A** Leave to appeal is granted (*Royal Forest and Bird Protection Society of New Zealand Inc v Rangitira Developments Ltd* [2018] NZCA 445, [2019] NZRMA 233).
- B** The approved question is whether the Court of Appeal was in error in setting aside the declarations made at [86] of the judgment of the High Court (*Rangitira Developments Ltd v Royal Forest and Bird Protection Society Ltd* [2018] NZHC 146, (2018) 20 ELRNZ 312).
- C** There is no order as to costs.
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REASONS

[1] In a judgment delivered on 20 February 2019, the applicant (Rangitira Developments Ltd) was granted leave to appeal against the judgment of the Court of Appeal in *Rangitira Developments Ltd v Royal Forest and Bird Protection Society of*

*New Zealand Inc.*¹ The Court of Appeal judgment dealt with the approach to be taken by the Buller District Council (the Council) to Rangitira's application for an access arrangement with the Council to enable the development of a mine on reserve land administered by the Council.

[2] Before the appeal was heard, information emerged about the status of the reserve. This information led to the Court re-visiting the decision to grant leave. And, after hearing from the parties, leave to appeal was revoked on the grounds that: first, the appeal was moot; second, it would be argued on a hypothetical basis; and, finally, the appeal would not resolve matters between the parties.² Leave was reserved to Rangitira to apply again for leave to appeal if the position changed. In particular, at [15] of the judgment revoking leave, the Court identified a number of scenarios concerning the status of reserve which, if they occurred, would mean the appeal was not moot.

[3] One of the scenarios, identified in [15(b)], was that the reserve in question became classified as a local purpose reserve under s 16(1) of the Reserves Act 1977. The reserve has now been classified and Rangitira has applied again for leave on the basis the proposed appeal is no longer moot.³ The respondent accepts the scenario contemplated in [15(b)] of this Court's earlier judgment has come to pass.

[4] The position is accordingly that the proposed appeal is no longer moot. The Court has earlier accepted the proposed appeal raises questions of general importance. Leave to appeal is therefore granted.

[5] In the circumstances, costs on this application for leave lie where they fall and we make no order as to costs.

Solicitors:
Natural Resources Law Ltd, Christchurch for Applicant
Gilbert Walker, Auckland for Respondent

¹ *Rangitira Developments Ltd v Royal Forest and Bird Protection Society of New Zealand Inc* [2019] NZSC 6.

² *Rangitira Developments Ltd v Royal Forest and Bird Protection Society of New Zealand Inc* [2019] NZSC 81.

³ No further evidence on this point is required.